

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Connors	Team: Squad #9	CCRB Case #: 201706222	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 07/22/2017 3:20 PM	Location of Incident: in front of 726 East 227th Street	Precinct: 47	18 Mo. SOL 1/22/2019	EO SOL 1/22/2019	
Date/Time CV Reported Sat, 07/22/2017 11:59 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/01/2017 10:50 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Brian Query	05001	937315	NARCBBX
2. SGT Cecilia Luckie	04593	938891	NARCBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 James Simpson	2444	943420	NARCBBX
2. DT3 Jose Lizardo	2113	944739	NARCBBX
3. DT3 Sean Destefano	3047	940087	NARCBBX
4. POM Victor Reyes	02151	947510	NARCBBX
5. POF Samantha Angelo	11754	950008	NARCBBX
6. DT3 Wilbert Hernandez	4925	932787	NARCBBX
7. DT3 Josue Marcelin	5026	942120	NARCBBX

Officer(s)	Allegation	Investigator Recommendation
A.SGT Brian Query	Force: Sergeant Brian Query used physical force against § 87(2)(b)	
B.SGT Brian Query	Abuse: Sergeant Brian Query did not obtain medical treatment for § 87(2)(b)	
C.SGT Cecilia Luckie	Abuse: Sergeant Cecilia Luckie did not obtain medical treatment for § 87(2)(b)	

Case Summary

On July 22, 2017, this complaint was filed on behalf of § 87(2)(b) by Sgt. Cecilia Luckie of Bronx North Narcotics. On August 1, 2017, this complaint was received at the CCRB under IAB Log #17-29065.

On July 22, 2017, at approximately 3:10 p.m., § 87(2)(b) was standing in front of 726 East 227th Street located between White Plains Road and Barnes Avenue in the Bronx. Also with § 87(2)(b) were § 87(2)(b) who stood in front of this location, and § 87(2)(b) who stood across the street on the opposite sidewalk.

Approximately ten minutes later, Sgt. Brian Query of Bronx North Narcotics exited from an unmarked police vehicle, approximately two car lengths before 726 East 227th Street, and approached § 87(2)(b). As Sgt. Query approached, he attempted to grab onto § 87(2)(b)'s t-shirt. § 87(2)(b) jump backwards to avoid being grabbed. Sgt. Query then fell to the ground, and pulled § 87(2)(b) down with him (**Allegation A – Force, § 87(2)(g)**).

After being brought to his feet, § 87(2)(b) made repeated requests for medical treatment to Sgt. Query because he believed his arm had been broken as a result of his apprehension. Sgt. Query allegedly ignored these requests and did not obtain medical treatment for § 87(2)(b) (**Allegation B – Abuse of Authority, § 87(2)(g)**). After the initial apprehension, other members of the Buy and Bust Team arrived on scene. These officers included Sgt. Cecilia Luckie, Det. Sean Destefano, Det. James Simpson, Det. Jose Lizardo, Det. James Simpson, Det. Wilbert Hernandez, and Det. Josue Marcellin. § 87(2)(b) continued to request to be taken to a hospital for his injury. Sgt. Luckie, the other supervisor on scene, allegedly ignored these requests and did not obtain medical treatment for § 87(2)(b) (**Allegation C – Abuse of Authority, § 87(2)(g)**) (**Board Review 01**).

§ 87(2)(b) was arrested and charged with resisting § 87(2)(b)

Video footage was obtained for this incident and it can be viewed within IA102 in the CTS.

Findings and Recommendations

Allegation A – Force: Sergeant Brian Query used physical force against § 87(2)(b)
It is undisputed Sgt. Query used physical force to apprehend and ultimately arrest § 87(2)(b) who, upon being grabbed by Sgt. Query, acknowledged jumping back in an attempt to flee. Sgt. Query then fell to the ground; pulling § 87(2)(b) down with him. As § 87(2)(b) fell, he braced his fall by extending both arms toward the floor in a push-up position. Sgt. Query then fell onto § 87(2)(b)'s back. § 87(2)(b) heard a “pop” and felt his left elbow go limp. Sgt. Query then pulled both of § 87(2)(b)'s arms behind his back to handcuff him. Once handcuffed, Sgt. Query lifted § 87(2)(b) to his feet and placed him against the exterior wall of 727 East 227th Street. In the process of being taken to the ground by Sgt. Query, § 87(2)(b) sustained a fracture to his left elbow (**Encl. Board Review 01**).

§ 87(2)(b)'s medical records indicate that he received medical treatment at § 87(2)(b) on § 87(2)(b). The medical records confirm that he was diagnosed with an elbow

dislocation with anterior dislocation of the left elbow and given a posterior splint and sling for his left arm (**Privileged Document**).

On the date of incident, Sgt. Query was supervising a team of officers conducting a buy and bust operation within the confines of the 47th and 48th Precincts. All of the officers assigned to this team were dressed in plainclothes. The team received a positive buy sign over the radio from a “ghost” officer that a narcotics transaction had taken place between § 87(2)(b) and an undercover officer. After receiving a description of § 87(2)(b) and the buy location, Sgt. Query decided that he would approach and ultimately apprehend § 87(2)(b) alone on foot.

Sgt. Query arrived on scene via an unmarked vehicle and exited approximately two car lengths behind from the buy location, determined to be 726 East 227th Street in the Bronx. Sgt. Query exited his vehicle and approached § 87(2)(b) on foot. When Sergeant Query announced himself as an officer and attempted to grab § 87(2)(b) by his arms, § 87(2)(b) allegedly shoved Sgt. Query against his chest. Sgt. § 87(2)(b) attempted to grab § 87(2)(b) a second time and was again shoved by § 87(2)(b) who then turned away from Sgt. Query, and ran toward Barnes Avenue. Sgt. Query testified that he utilized a leg sweep of § 87(2)(b)'s right leg, and subsequently tackled him to the ground. Sgt. Query grabbed § 87(2)(b) by utilizing a body-hold, causing each to fall onto the sidewalk (**Board Review 02**).

NYPD Patrol Guide Procedure 221-01 states members of service will determine the reasonableness of force based on (a) the severity of the crime and circumstances, (b) actions taken by the subject, (c) whether the subject is actively resisting custody, and (d) whether the subject is attempting to evade arrest by flight. Furthermore, the reasonableness of the use of force is based upon the totality of the circumstances known by the MOS at the time of the use of force. The Department examines the reasonableness of force view from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation (**Board Review 03**).

§ 87(2)(g)
[REDACTED]

Allegation B – Abuse of Authority: Sergeant Brian Query did not obtain medical treatment for § 87(2)(b)

Allegation C – Abuse of Authority: Sergeant Cecilia Luckie did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) testified that he made repeated requests for medical treatment for his left arm, which he believed had been broken during his apprehension. This request was made initially to Sgt. Query immediately after § 87(2)(b) was handcuffed and brought to his feet. Sgt. Query ignored § 87(2)(b)'s request. When the other members of the buy and bust team arrived, § 87(2)(b) continued to request medical treatment for his left arm. These requests were made to and in the

presence of both Sgt. Query and Sgt. Luckie, neither of whom responded to these requests. § 87(2)(b) was then entered into the prisoner van, where for the duration of the buy and bust operation, which lasted approximately four hours, he continued to request medical treatment for his injury to the officers operating the prisoner van. The officers, identified as PO Angelo and PO Reyes, did not respond to these requests. Upon arriving at the 48th Precinct stationhouse, § 87(2)(b) was promptly taken to § 87(2)(b) in an ambulance (**Encl. Board Review 01**).

The investigation was unable to locate or obtain a statement from § 87(2)(b) who was allegedly a witness to this incident. In an unsworn statement provided by § 87(2)(b) who identified himself as § 87(2)(b)'s brother, § 87(2)(b) stated that when Sgt. Query pulled § 87(2)(b)'s arms behind his back, § 87(2)(b) screamed out loud, "My arm! My arm!" While § 87(2)(b) was being patted down and searched prior to being placed in the prisoner van, § 87(2)(b) repeatedly asked to go to a hospital to receive medical treatment for his left arm. § 87(2)(b) did not remember how many times § 87(2)(b) asked to be taken to a hospital but said that this request was made in general, and not towards any specific officer. § 87(2)(b) did not remember if any officer present responded to § 87(2)(b)'s request for medical treatment (**Board Review 18**).

During his CCRB interview, Sgt. Query denied observing any visible injuries to § 87(2)(b) or hearing § 87(2)(b) make any requests for medical treatment while on scene or during his detainment inside the prisoner van. Sgt. Query testified that upon arriving at the stationhouse, approximately four hours later, § 87(2)(b) asked Sgt. Query if he would be released with a summons or a DAT. Sgt. Query replied that § 87(2)(b) would not be released due to the validity of his charges. At that point, § 87(2)(b) became upset and said to Sgt. Query, "I want to go to a hospital then, you lied, and I am hurt." Sgt. Query then called for an ambulance and § 87(2)(b) was transported to St. Barnabas Hospital. Sgt. Query later learned that § 87(2)(b) had sustained a dislocated left elbow (**Encl. Board Review 02**).

During her CCRB interview, Sgt. Luckie denied observing any visible injuries to § 87(2)(b) or hearing § 87(2)(b) make any requests for medical treatment while on scene, or during his detainment. Sgt. Luckie testified that at the conclusion of the buy and bust operation that day, she later learned that § 87(2)(b) had been taken to the 48th Precinct stationhouse for arrest processing, and then subsequently removed to a hospital. Sgt. Luckie was informed of this by PO § 87(2)(b) Maldonado, who was the officer assigned to transport § 87(2)(b) to the hospital (**Board Review 04**). When shown a the Threat, Resistance and Injury Report that Sgt. Luckie prepared (**Board Review 05**), and which indicates that § 87(2)(b) sustained a dislocated elbow, Sgt. Luckie clarified that she had prepared this report upon arriving back to her command, after notifying IAB that § 87(2)(b) had sustained a dislocated elbow.



2017-10-05_9-25-22 (PVAN#49526).mp4

The above is a 07:07 minute clip of surveillance video footage taken from prisoner van #49526 which was the vehicle used to transport § 87(2)(b) during the buy and bust operation (**please note – audio is not captured**). This surveillance footage can be viewed within IA102 in CTS using the VLC player. The video footage is dated from July 22, 2017 with a time stamp that reads 2:24 p.m. (approximately one hour behind) and displays four surveillance cameras (designated as CAM1, CAM2, CAM3, and CAM4). The video footage was provided by Sergeant Stephen Williams of Detective Bureau Investigations Division who is conducting a concurrent investigation into this incident (**Board Review 06**).

At 00:16 mark within “CAM2,” (which can be viewed below) § 87(2)(b) is seen entering into the prisoner van, at which point an injury is clearly visible to his left elbow (**Board Review 07**). Both Sgt. Query and Sgt. Luckie identified themselves as being present during the time § 87(2)(b) was entered into the prisoner van. Both are identifiable at 00:24 mark within “CAM3” using the VLC player. Det. Lizardo, Det. Destefano and Det. Simpson can also be seen in at 00:16 mark within “CAM3” (**Board Review 08**) (**Board Review 09**).

During their CCRB statements, Sgt. Query and Sgt. Luckie denied ever hearing § 87(2)(b) request medical treatment from the time of his apprehension to when he was brought back to the 48th Precinct stationhouse (**Encl. Board Review 02 and 04**). The investigation also interviewed Det. Destefano, Det. Lizardo, Det. Hernandez, Det. Marcelin, PO Angelo, and PO Reyes who also denied that § 87(2)(b) requested medical assistance.

PO Angelo and PO Reyes, who were assigned to prisoner van during this buy and bust operation, denied observing any visible injury to § 87(2)(b) or hearing him request medical treatment during the entirety of his detainment within the van. Both officers testified that § 87(2)(b)'s chief concern during this transport was when the prisoner van would arrive at the stationhouse so he could be released from custody. The officers both stated however that sometime shortly after his apprehension, § 87(2)(b) requested to be front-cuffed because he was experiencing discomfort to an unspecified arm (**Board Review 10**) (**Board Review 11**). Det. Lizardo, the officer whom adjusted § 87(2)(b)'s handcuffs, denied observing any physical injury to § 87(2)(b) or hearing him request medical treatment during this adjustment (**Board Review 12**).

NYPD Patrol Guide Procedure 210-04 states that officers should request an ambulance and remove a prisoner to a hospital directly from the place of arrest, if necessary (**Board Review 13**).

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 14**).
- Sgt. Query has been a member-of-service for 13 years and has been a subject in six CCRB complaints and 13 allegations, none of which were substantiated. § 87(2)(g) (Board Review 15).
- Sgt. Luckie has been a member-of-service for 14 years and has been a subject in three CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g) (Encl. Board Review 15).

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s injury and arrest.
- § 87(2)(b)
- On November 14, 2017, a request was sent to the New York City Comptroller's Office in regards to any notice of claim. § 87(2)(b) filed a Personal Injury Claim as a result of this incident for the sum of one million dollars (**Board Review 17**).

Squad No.: **9**

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date